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8 UNITED STATES DISTRICT COURT
9 NORTHERN DISTRICT OF CALIFORNIA
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11 DANIEL EDSTROM and TERI)
12 EDSTROM,)

13 Plaintiffs,)

14 v.)

15 ALL SERVICES AND)
16 PROCESSING, also known as,)
17 A.S.A.P. COLLECTION)
18 SERVICES,)

19 Defendant.)
20 _____)

No. C04-1514 BZ

**ORDER ON CROSS MOTIONS FOR
SUMMARY JUDGMENT**

21 On April 19, 2004, plaintiffs Daniel and Teri Edstrom
22 filed a complaint alleging violations of the Fair Debt
23 Collection Practices Act ("FDCPA"), 15 U.S.C. § 1692 *et*
24 *seq.*, and the Rosenthal Fair Debt Collection Practices Act
25 ("RFDCPA"), California Civil Code §§ 1788-1788.32, against
26 defendant All Services and Processing, also known as
27 A.S.A.P. Collection Services. Now before me are the
28 parties' cross-motions for summary judgment.¹

¹ All parties have consented to my jurisdiction pursuant to 28 U.S.C. § 636(c).

When plaintiffs bought their house in Brentwood, California, they became members of the Apple Hill Association ("Association"). Joint Statement of Undisputed Facts ¶8. As members of the Association, plaintiffs became subject to the Association's Covenants, Conditions, and Restrictions ("CC&R's") and Assessment Collection Policy ("Collection Policy"). Id. at ¶9. Defendant contends, and plaintiffs do not dispute, that they fell behind on their monthly payments, and incurred financial obligations to the Association. Id. at ¶10. The Association granted defendant authority to collect on the debt. Id. at ¶11. Defendant subsequently sent a letter to plaintiff regarding the debt owed to the Association dated July 18, 2003, which plaintiffs received. Id.

The only issue in dispute is whether the July 18, 2003 letter complies with the FDCPA and the RFDCPA.² The letter explains that the Association retained defendant to represent it in the collection of plaintiffs' delinquent account. Declaration of Robert L. Hyde, Esq. ("Hyde Decl."), Ex. 1; Tom Fier's Aff. in Support of Def's. Mot. for Summ. Judgment ("Fier Aff."), Ex. G. It states that on August 18, 2003, plaintiffs' account balance will be \$955.49. Id. It also breaks down the account balance to

² The parties have agreed that plaintiffs are "consumers" and defendant is a "debt collector" for purposes of the FDCPA, and that plaintiffs are "debtors" and defendant is a "debt collector" for purposes of the RFDCPA. Id. at ¶¶3-6. The parties also agree that defendant's letter was both a "communication" and an "initial communication" as defined by sections 1692a(2) and 1692g(a) of the FDCPA. Id. at ¶13.

1 include \$644.00 in regular assessments, \$60.00 in late
2 fees, \$28.72 in interest, a \$180 collection fee, and \$42.77
3 in collection costs. Id. It requests "payment in full to
4 A.S.A.P. in the amount stated above, payable to the
5 Association and postmarked by the due date." Id. It
6 states, "In accordance with the Fair Debt Collection
7 Practices Act we will assume that this debt is valid unless
8 you dispute it in writing within 30 days of the date of
9 this letter." Id. It further states, "Upon receipt of
10 written disputes, a \$75.00 Dispute Claim Processing Fee is
11 added to the account and will remain if the Association's
12 records are correct or if a request for a credit is denied
13 by the Board." Id. In bold lettering, it states, "Partial
14 payments received without an established payment plan will
15 be returned and a \$45.00 processing fee will be added to
16 your account to return the payment." Id. A copy of the
17 Collection Policy is attached to the letter. Id. The
18 letter also notifies plaintiffs that they may obtain
19 additional information about the Association's collection
20 rights and remedies by referring to the "Assessments
21 Section" of the CC&R's. Id.

22 Plaintiffs contend that the July 18, 2003 letter
23 violated section 1692g(a) of the FDCPA.³ 15 U.S.C. §

24
25 ³ Defendant argues that plaintiffs waived their
26 rights under the FDCPA and the RFDCPA by not disputing the
27 debt in an August 7, 2004 notice to the Association. See
28 Def.'s Reply Mem. in Supp. of Def's Mot. for Summ. J., Ex. J
(containing a copy of defendant's letter with the words "We
never got any notices from Applehill about collections, we
had no idea we were behind" handwritten on the
front.)(emphasis in original). A debtor's communication to

1 1692g(a). Section 1692g(a) provides:

2 (a) Notice of debt; contents

3 Within five days after the initial communication
4 with a consumer in connection with the collection
5 of any debt, a debt collector shall, unless the
6 following information is contained in the initial
communication or the consumer has paid the debt,
send the consumer a written notice containing -

7 (1) the amount of the debt;

8 (2) the name of the creditor to whom the debt
is owed;

9 (3) a statement that unless the consumer,
10 within thirty days after receipt of the
notice, disputes the validity of the
11 debt, or any portion thereof, the debt
will be assumed to be valid by the debt collector;

12 (4) a statement that if the consumer notifies
the debt collector in writing within the
13 thirty-day period that the debt, or any
portion thereof, is disputed, the debt
14 collector will obtain verification of the debt
or a copy of a judgment against the consumer
15 and a copy of such verification or judgment
will be mailed to the consumer by the debt
16 collector; and

17 (5) a statement that, upon the consumer's
written request within the thirty-day period,
18 the debt collector will provide the consumer
with the name and address of the original
19 creditor, if different from the current
creditor.
20

21 15 U.S.C.A. § 1692g(a). "The FDCPA is a strict liability
22 statute and thus does not require a showing of intentional
23 conduct on the part of the debt collector." Irwin v.

24 _____
25 the creditor does not constitute an admission of liability
or a waiver of the protections of the FDCPA or the RFDCPA.
26 See 15 U.S.C. § 1692g(c); Cal. Civ. Code § 1788.33; Johnson
27 v. Eaton, 873 F. Supp. 1019, 1028 (M.D. La. 1995). Further,
a plaintiff has standing to sue under the FDCPA regardless
28 of whether a valid debt exists. Baker v. G.C. Services
Corp., 677 F.2d 775, 777 (9th Cir. 1982).

1 Mascott, 112 F. Supp. 2d 937, 958 (N.D. Cal. 2000).
2 "Validation requirements are strictly construed under the
3 least sophisticated consumer standard." Irwin, 112 F.
4 Supp. 2d at 953 (citing Baker, 677 F.2d at 778) (internal
5 quotation marks ommitted); see also Smith v. Financial
6 Collection Agencies, 770 F. Supp. 232, 235 (D. Del. 1991)
7 ("Generally, a validation notice will comport with section
8 1692(g) if the content of the notice complies with the
9 literal terms of the statute. At a minimum, this requires
10 that the validation notice is actually included with either
11 the initial communication or within five days of the
12 initial communication, ... and if included, that it
13 contains all the information dictated by the statute.").

14 The statement in the letter that defendant "will
15 assume the debt is valid unless you dispute it in writing
16 within 30 days of the date of the letter" violates section
17 1692g(a)(3). In interpreting the FDCPA, words and phrases
18 must be given their natural and ordinary meaning. See
19 Romine v. Diversified Collection Services, Inc., 155 F.3d
20 1142, 1146-47 (9th Cir. 1998) (citing Heintz v. Jenkins,
21 514 U.S. 291, 294 (1995)). I am also obliged to "give
22 effect, if possible, to every word Congress used." Baker,
23 677 F.2d at 778 (citing Reiter v. Sonotone Corp., 442 U.S.
24 330, 339 (1979)). "Where, as here, the language of the
25 statute is plain and unambiguous, resort to legislative
26 history is unnecessary." Rucker v. Davis, 203 F.3d 627,
27 636 (9th Cir. 2000).

28 The statute clearly requires the letter to state that

1 the debtor may dispute the debt "within thirty days after
2 receipt of this notice." 15 U.S.C. § 1692g(a)(3). Because
3 defendant's letter requires plaintiffs to dispute the
4 letter within thirty days of the date of the letter, it
5 violates section 1692g(a)(3). See Cavallaro v. Law Office
6 of Shapiro & Kreisman, 933 F. Supp. 1148 (E.D.N.Y. 1996)
7 (holding that a letter stating that a dispute had to be
8 made "within thirty days from the date of this notice"
9 violated section 1692g(a)). Defendant's contention that
10 this violation is de minimis because plaintiff still likely
11 had approximately thirty days to respond is erroneous.
12 "Congress has consciously protected against abusive tactics
13 of debt collectors, such as the backdating of notices or
14 other practices that might shorten debtors [sic] time to
15 respond." Id. at 1154.

16 The statement in the letter that the debt will be
17 assumed to be valid unless the debtor disputes the debt "in
18 writing" also contravenes the express language of the
19 statute and violates the FDCPA. See 15 U.S.C. §
20 1692g(a)(3). Subsection (a)(3) does not require a dispute
21 to be in writing. See 15 U.S.C. § 1692g(a)(3); In re
22 Sanchez, 173 F. Supp. 2d 1029, 2033-35 (N.D. Cal. 2001); 15
23 U.S.C. § 1692g(a)(3). Other subsections of section 1692g,
24 by contrast, do require a writing, which triggers
25 additional duties on the part of the debt collector.
26 See 15 U.S.C. §§ 1692g(a)(4)-(5)&(b). For example,
27 subsection (a)(4) requires the debt collector to obtain
28 verification of the debt or a copy of a judgment and to

1 mail a copy to the consumer if the consumer disputes the
2 debt in writing. 15 U.S.C. § 1692g(a)(4). Subsection
3 (a)(5) requires the debt collector to provide the original
4 creditor's name and address upon the consumer's written
5 request. 15 U.S.C. § 1692g(a)(5). Finally, subsection (b)
6 requires the debt collector to cease its collection efforts
7 if the consumer disputes the debt in writing. 15 U.S.C. §
8 1692(b). While the Ninth Circuit has not yet ruled on this
9 issue, a judge of this district has held that section
10 1692g(a)(3) does not require a writing. In re Sanchez, 173
11 F. Supp. 2d 1029, 2033-35 (N.D. Cal. 2001). Other
12 districts have similarly held that a statement requiring
13 that the dispute be in writing violates the FDCPA. See
14 e.g., Rosado v. Taylor, 324 F. Supp. 2d 917, 929 (N.D. Ind.
15 2004); King v. Int'l Data Services, 2002 WL 32345923, at *4
16 (D. Haw. 2002); Sambor v. Omnia Credit Services, Inc., 183
17 F. Supp. 2d 1234, 1240 n.4 (D. Haw. 2002); Reed v. Smith,
18 Smith & Smith, 1995 WL 907764, at *2 (M.D. La. 1995);
19 Harvey v. United Adjusters, 509 F. Supp. 1218, 1221 (D. Or.
20 1981); but see Graziano v. Harrison, 950 F.2d 107, 112 (3d
21 Cir. 1991).

22 Defendant violated subsection (a)(3) by failing to
23 inform the debtors of their right to dispute any portion of
24 the debt. See 15 U.S.C. § 1692g(a)(3); Baker, 677 F.2d at
25 778; McCabe v. Crawford, 272 F. Supp. 2d 736, 744 (N.D.
26 Ill. 2003); Harvey, 509 F. Supp. at 1221. The letter also
27 stated in bold lettering, "Partial payments received
28 without an established payment plan will be returned and a

1 \$45.00 processing fee will be added to your account to
2 return this payment." Fier Aff., Ex. G. This statement,
3 complied with the failure to affirmatively advise of the
4 right to dispute a portion of the debt, would likely have
5 confused the least sophisticated consumer as to his or her
6 right to dispute a portion of the debt. See Terran v.
7 Kaplan, 109 F.3d 1428, 1431 (9th Cir. 1997) ("Whether the
8 initial communication violates the FDCPA depends on whether
9 it is likely to deceive or mislead a hypothetical least
10 sophisticated consumer.").

11 The letter's failure to include the statements
12 required by section 1692g(a)(4) and (5) further violates
13 the statute. See 15 U.S.C. §§ 1692g(a)(4)&(5); Irwin, 112
14 F. Supp. 2d at 953. Section 1692g(a)(4) requires "a
15 statement that if the consumer notifies the debt collector
16 in writing within the thirty-day period that the debt, or
17 any portion thereof, is disputed, the debt collector will
18 obtain verification of the debt or a copy of a judgment
19 against the consumer and a copy of such verification or
20 judgment will be mailed to the consumer by the debt
21 collector." 15 U.S.C. § 1692g(a)(4). While defendant's
22 letter stated that plaintiffs may dispute the debt in
23 writing, it did not contain an offer to obtain verification
24 of the debt and provide it to plaintiffs upon request. See
25 Fier Aff., Ex. G.

26 Section 1692g(a)(5) requires "a statement that, upon
27 the consumer's written request within the thirty-day
28 period, the debt collector will provide the consumer with

1 the name and address of the original creditor, if different
2 from the current creditor." 15 U.S.C. § 1692g(a)(5). The
3 letter included the name of the original creditor, the
4 Apple Hill Association, but did not provide the
5 Association's address or notify plaintiffs of their right
6 to request the address. Fier Aff., Ex. G. While defendant
7 contends that plaintiffs knew the Association's address
8 because they sent a notice to the Association within the
9 thirty-day time period, this is not relevant to my
10 determination of whether the letter violated section 1692g.
11 "The language of section 1692g is clear that notice of debt
12 must contain the enumerated disclosures; it does not
13 require that a debtor must actually be misled by a failure
14 to do so." Kuhn v. Account Control Tech., Inc., 865 F.
15 Supp. 1443, 1450 (D. Nev. 1994).

16 Finally, plaintiffs contend that defendant's attempts
17 to collect amounts in addition to the original debt owed to
18 the Association violate section 1692f of the FDCPA. These
19 charges include (1) \$60.00 in late fees, (2) \$28.72 in
20 interest, (3) a \$180 collection fee, (4) \$42.77 in
21 collection costs, (5) a \$75.00 dispute claim processing
22 fee, (6) a \$45.00 processing fee for partial payments, and
23 (7) additional late fees. Section 1692f provides, "A debt
24 collector may not use unfair or unconscionable means to
25 collect or attempt to collect any debt." 15 U.S.C. §
26 1692f. "The collection of any amount (including any
27 interest, fee, charge, or expense incidental to the
28 principal obligation) unless such amount is expressly

1 authorized by the agreement creating the debt or permitted
2 by law" violates section 1692f. 15 U.S.C. § 1692f.
3 Defendant justifies the fees as being expressly authorized
4 by the Collection Policy and the CC&RS or being permitted
5 by California Civil Code § 1366.

6 The Collection Policy expressly provides for late
7 charges and interest. Section 9.0 of the Collection Policy
8 provides, "Delinquent accounts become subject to the
9 following additional charges as contained in Civil Code
10 section 1366 and the governing documents: costs of
11 collection including reasonable attorney's fees, a late
12 charge of \$10.00 or 10% of the delinquent amount, whichever
13 is greater and interest on all sums (including the
14 delinquent assessment, collection fees and costs, and
15 reasonable attorney's fees) at an annual interest rate not
16 to exceed 0.12 commencing 30 days after the assessment
17 becomes due." Fier Aff., Ex. C. Section 1366(d) of the
18 California Civil Code provides that a homeowner's
19 association may recover a late charge not exceeding ten
20 percent of the delinquent assessment or ten dollars,
21 whichever is greater, as well as interest on all sums, at
22 an annual interest rate of twelve percent. Cal. Civ. Code
23 § 1366(e)(2)&(3). At the hearing, plaintiff's counsel
24 clarified that they were challenging only the amount of,
25 not defendant's right to impose, late fees and interest. I
26 therefore find that defendants did not violate section
27 1692f of FDCPA by seeking late fees or interest in the
28

1 letter.⁴

2 Plaintiffs also challenge the \$180 collection fee, the
3 \$42.77 in collection costs, the \$75.00 dispute claim
4 processing fee, the \$45.00 processing fee for partial
5 payments, and additional late fees. Defendant asserts
6 these fees are expressly authorized by the Collection
7 Policy and/or permitted by law. However, the parties have
8 not briefed many of the legal and factual issues these fees
9 present. Neither side has briefed the issue of whether, to
10 be "expressly authorized," the amount of the fee must be
11 stated in the Collection Policy. Nor have the parties
12 briefed whether these fees are permitted by Cal. Civ. Code
13 § 1788.14(b) ("No debt collector shall . . . [collect or
14 attempt] to collect from the debtor the whole or any part
15 of the debt collector's fee or charge for services
16 rendered, or other expense incurred by the debt collector
17 in the collection of the consumer debt, except as permitted
18 by law").⁵ Even assuming these fees are authorized or
19 permitted, I would still not grant summary judgment for
20 either party. Both the Collection Policy and Cal. Civ.
21 Code § 1366(e)(1) restrict defendant to recovering fees

23 ⁴ I express no view as to whether the amount of the
24 late fees or interest were properly calculated, as the
parties did not brief this issue.

25 ⁵ The Collection Policy authorizes recovery of "any
26 costs and fees incurred in processing and collecting
delinquent amounts". See Fier Aff., Ex. C, Collection
27 Policy, §10.0
28 Cal. Civ. Code §1366(e)(1) permits only the recovery of
"[r]easonable costs incurred in collecting the delinquent
assessment, including reasonable attorney's fees".

1 that were incurred and the statute adds the requirement
2 that they be reasonable. Here, the record is unclear
3 whether the charged collection fee and costs had actually
4 been incurred, whether the amounts of the other fees were
5 related to costs that would be incurred and whether any of
6 the fees were reasonable. See e.g., Hyde Decl., Ex. 5 at
7 44-45,47; Pltfs' Mem. of Pts. & Auth. in Opp. to Def's Mot.
8 for Summary Judgment, Ex. A at 23-24 (suggesting that the
9 fees are arbitrary and were not incurred). Given these
10 unresolved legal and factual issues, I deny both parties
11 summary judgment on the issue of whether these fees violate
12 section 1692f of the FDCPA.

13 Plaintiffs contend that defendant's violations of the
14 FDCPA also constitute violations of the RFDCPA. The RFDCPA
15 provides, in relevant part, "Notwithstanding any other
16 provision of this title, every debt collector collecting or
17 attempting to collect a debt shall comply with the
18 provisions of Sections 1692b to 1692j, inclusive, of, and
19 shall be subject to the remedies in Section 1692k of Title
20 15 of the United States Code." Cal. Civ. Code § 1788.17.
21 The FDCPA does not preempt the RFDCPA, as defendant
22 suggests. See Alkan v. Climortgage, Inc., 336 F. Supp. 2d
23 1061, 1065 (N.D. Cal. 2004). "Instead, California has
24 simply incorporated by reference the text of certain
25 federal provisions into the [RFDCPA], rather than copying
26 them verbatim into the California code." Id. I find that
27 defendant's violations of section 1692g of the FDCPA also
28 constitute violations of RFDCPA.

1 For the foregoing reasons, plaintiffs' motion for
2 summary judgment that the letter violated sections 1692g(a)
3 of the FDCPA and 1788.17 of the RFDCPA is **GRANTED**.
4 Plaintiffs' motion for summary judgment as to the fees
5 imposed in the letter is **DENIED**. Defendant's motion for
6 summary judgment is **GRANTED** to the extent that I have ruled
7 that the late fees and interest are expressly authorized by
8 the Collection Policy and permitted by California Civil
9 Code § 1366(e)(2) and is **DENIED** in all other respects. Any
10 remaining issues shall proceed as set forth in my August
11 18, 2004 Order scheduling jury trial and pretrial matters.
12 Dated: February 22, 2005

13 /s/Bernard Zimmerman
14 Bernard Zimmerman
15 United States Magistrate Judge
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